

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 13/11/2020 4:14:12 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD1446/2019
File Title: LYNELLE BOUCHERE v CAR FESTIVALS PTY LTD ABN 70 603 505
728 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 20/11/2020 10:05:09 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 17
Rule 8.05(1)(a)



Statement of First Cross-Claim

No. NSD1446 of 2019

Federal Court of Australia
District Registry: New South Wales
Division: General

Lynelle Bouchere

Applicant

Car Festivals Pty Ltd

ABN 70 670 505 728
First Respondent

Northern Territory Major Events Company Pty Ltd

ABN 22 085 961 520
Second Respondent

Summernats Pty Ltd

ABN 48 139 042 961
Third Respondent

Northern Territory Major Events Company Pty Ltd

ABN 22 085 961 520
First Cross-Claimant

Car Festivals Pty Ltd and another named in the schedule

ABN 70 670 505 728
First Cross-Respondent

Filed on behalf of (name & role of party)	Northern Territory Major Events Company Pty Ltd (ABN 22 085 961 520), Second Respondent / First Cross-Claimant		
Prepared by (name of person/lawyer)	David Lee		
Law firm (if applicable)	Clyde & Co		
Tel	(02) 9210 4400	Fax	(02) 9210 4599
Email	david.lee@clydeco.com		
Address for service (include state and postcode)	Level 15, 333 George Street, Sydney NSW 2000		

[Form approved 01/08/2011]

Background

1. At all material times the Cross-Applicant (**NTMEC**) was and is a corporation able to sue in its own name.
2. At all material times the First Cross-Respondent (**Car Festivals**) was and is a corporation able to be sued in its own name.
3. At all material times the Second Cross-Respondent (**Summernats**) was and is a corporation able to be sued in its own name.
4. For the purposes only of this Cross-Claim, the Cross-Claimant repeats the matters alleged by the Applicant as against Car Festivals and Summernats, in paragraphs 6 to 41 of the Further Amended Statement of Claim filed 27 August 2020.

Claim in contract against Car Festivals

5. On or about 1 October 2015, NTMEC and Car Festivals entered into a contract for the promotion, organisation and management of the RedCentre NATS event (**Sanctions Agreement**).
6. The Sanctions Agreement was in force for the promotion, organisation and management of the 2017 RedCentre NATS event.
7. It was a term of the Sanctions Agreement that Car Festivals was responsible for providing management personnel for the 2017 RedCentre NATS event, including an Event Manager and an Event Coordinator (Schedule 2, Services Specification, Clause 2).
8. It was a term of the Sanctions Agreement (Schedule 2, Services Specification, Clause 2) that Car Festivals was responsible for:
 - (a) Physically planning the venue layout and infrastructure requirements for competition areas;

- (b) Inspecting the competition areas prior to use to ensure that they have been laid out by NTMEC in accordance with Car Festivals' plan; and
 - (c) Giving advice to NTMEC on general venue layout and infrastructure requirements when asked by NTMEC.
- 9. It was a term of the Sanctions Agreement that Car Festivals must comply and ensure that its personnel comply with all applicable standards, awards, laws and regulations (Clause 4.3(f)(i)).
- 10. It was a term of the Sanctions Agreement that Car Festivals must supply all services under the Sanctions Agreement with due care and skill, including complying with all relevant regulations and operation procedures relating to, among other things, safety and customer care (Clause 9.1(c) and (d)).
- 11. It was a term of the Sanctions Agreement (Clause 11.4) that Car Festivals indemnifies NTMEC against all losses, damages, expenses and costs (on a full indemnity basis) that NTMEC sustains or incurs as a result, whether directly or indirectly, of:
 - (a) a breach of the Sanctions Agreement by Car Festivals;
 - (b) the negligence of Car Festivals or any employee or subcontractor of Car Festivals; and
 - (c) the supply of services by Car Festivals under the Sanctions Agreement.
- 12. Without admission and for the purposes of this Cross-Claim only, if the Applicant and/or the Group Members suffered loss or damage as alleged in the Further Amended Statement of Claim or at all, then:
 - (a) Such injury loss or damage was caused and/or contributed to by Car Festivals' breach of the Sanctions Agreement in failing to exercise due care and skill, or in failing to comply with all applicable standards and regulations, in the planning and/or inspection of the competition areas;

- (b) Such injury loss or damage was caused and/or contributed to by Car Festivals' breach of the Sanctions Agreement in failing to exercise due care and skill in giving advice to NTMEC on general venue layout and infrastructure requirements; and/or
 - (c) Such injury loss or damage was caused and/or contributed to by negligence of Car Festivals or any employee or subcontractor of Car Festivals.
13. In accordance with its obligations under the Sanctions Agreement, Car Festivals must indemnify NTMEC against any liability, damages, expenses and costs that NTMEC sustains or incurs as a result of these proceedings.
14. In the alternative, by reason of Car Festivals' breach of the Sanctions Agreement, NTMEC has suffered loss and damage including any liability, damages, expenses and costs that NTMEC sustains or incurs as a result of these proceedings.

Claim for negligence against Car Festivals

15. In providing services under the Sanctions Agreement, Car Festivals owed a duty to NTMEC to exercise reasonable skill and care.
16. Without admission and for the purposes of this Cross-Claim only, if the Applicant and/or the Group Members suffered loss or damage as alleged in the Further Amended Statement of Claim or at all, then:
- (a) Such injury loss or damage was caused and/or contributed to by Car Festivals' breach of its duty to NTMEC to exercise due care and skill in the planning and/or inspection of the competition areas; and/or
 - (b) Such injury loss or damage was caused and/or contributed to by Car Festivals' breach of its duty to NTMEC to exercise due care and skill in giving advice to NTMEC on general venue layout and infrastructure requirements, including in February 2015 when the proposed layout of the burnout area and spectator mound was sent to Car Festivals for comment.

17. By reason of Car Festivals' breach of its duty to NTMEC, NTMEC has suffered loss and damage including any liability, damages, expenses and costs that NTMEC sustains or incurs as a result of these proceedings.

Claim for contribution/indemnity against Car Festivals and Summernats

18. Without admission and for the purposes of this Cross-Claim only, if the Applicant and/or the Group Members suffered loss or damage as alleged in the Further Amended Statement of Claim or at all, then as particularised in the Further Amended Statement of Claim such injury loss or damage was caused and/or contributed to by:

- (a) breach of statutory guarantees by Car Festivals; and/or
- (b) negligence of Car Festivals.

19. Without admission and for the purposes of this Cross-Claim only, if the Applicant and/or the Group Members suffered loss or damage as alleged in the Further Amended Statement of Claim or at all, then as particularised in the Further Amended Statement of Claim such injury loss or damage was caused and/or contributed to by:

- (a) breach of statutory guarantees by Summernats; and/or
- (b) negligence of Summernats.

20. In the event that NTMEC is found liable to the Applicant and/or the Group Members, NTMEC is entitled to contribution and/or indemnity from Car Festivals and Summernats:

- (a) as joint tortfeasors pursuant to s 12(4) and s 13 of the *Law Reform (Miscellaneous Provisions) Act 1956* (NT); and/or
- (b) under the principles of equitable contribution.

Remedies

1. Declaration that Car Festivals indemnifies the NTMEC for any liability NTMEC has to the Applicant and/or the Group Members.
2. Damages.
3. Contribution or Indemnity from Car Festivals and Summernats for any liability NTMEC has to the Applicant and/or the Group Members, including under s 12(4) and s 13 of the *Law Reform (Miscellaneous Provisions) Act 1956* (NT).
4. Equitable contribution.
5. Interest.
6. Costs.

Date: 13 November 2020



.....
Signed by David Lee
Lawyer for the Second Respondent and First
Cross-Claimant

This pleading was prepared by David Lee, Lawyer for the Second Respondent and First Cross-Claimant and Hilbert Chiu of Counsel, and settled by Julian Sexton SC.

Certificate of lawyer

I David Lee certify to the Court that, in relation to the statement of cross-claim filed on behalf of the first cross claimant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 13 November 2020



Signed by David Lee
Lawyer for the Second Respondent and First
Cross-Claimant

Schedule

No. NSD1446 of 2019

Federal Court of Australia
District Registry: New South Wales
Division: General

Cross-Respondents

Summernats Pty Ltd

ABN 48 139 042 961

Second Cross-Respondent